

Section 508 Acquisition FAQ's

Acquisition of Electronic and Information Technology Under Section 508 of the Rehabilitation Act

Questions and Answers

Update: January 2002

NEW Note to Readers

This document is a consolidation of acquisition-related questions that have been posed by agencies, contractors, and members of the disability community regarding section 508 of the Rehabilitation Act. The responses to these questions are intended to promote a better understanding of the requirements of section 508 and its implementing regulations, including the collaboration that is anticipated within agencies in the acquisition of EIT.

The document is purely informational. It neither creates new policies nor changes existing policies. Agency personnel must consult appropriate officials within their agencies for formal advice.

This web document, which is being hosted by the General Services Administration, was developed after review by an inter-agency steering committee comprised of agencies with lead responsibilities for the implementation of section 508. The steering committee was established to further facilitate the effective implementation of section 508.

This "living" document may be further updated as necessary to address additional questions and further promote a common and effective understanding of section 508 requirements. Accordingly, you are encouraged to monitor the section 508 web site, www.section508.gov. Comments are welcome and may be sent to section.508@gsa.gov.

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A. **INTRODUCTION**

A.1. **What is section 508?**

Section 508 refers to a statutory section in the Rehabilitation Act of 1973 (found at 29 U.S.C. 794d). Congress significantly strengthened section 508 in the Workforce Investment Act of 1998. Its primary purpose is to provide access to and use of Federal executive agencies' electronic and information technology (EIT) by individuals with disabilities. The statutory language of section 508 can be found at www.section508.gov.

Section 508 requirements are separate from, but complementary to, requirements in sections 501 and 504 of the Rehabilitation Act that require, among other things, that agencies provide reasonable accommodations for employees with disabilities, provide program access to members of the public with disabilities, and take other actions necessary to prevent discrimination on the basis of disability in their programs.

A.2.i. **What does section 508 require?**

Section 508 generally requires Federal agencies to ensure that their procurement of EIT takes into account the needs of all end users – including people with disabilities. Doing so enhances the ability of Federal employees with disabilities to have access to and use of information and data that is *comparable* to that provided to others. Similarly, agency procurement of accessible EIT enhances the ability of members of the public with disabilities who are seeking information or services from a Federal agency to have access to and use of information and data that is *comparable* to that provided to others. Comparable access is not required if it would impose an "undue burden" on the agency. If an agency invokes the undue burden exception, the statute requires the information and data to be provided to individuals with disabilities by an alternative means of access. (See section B.6.ii, below.)

A.2.ii. **Should EIT be compatible with assistive technology?**

Yes, as a general matter. The goal of section 508 is that EIT be compatible with assistive technology. In some cases, the standards require that the acquired EIT be readily usable without the need for assistive devices. For example, products covered by section 1194.25, Self Contained, Closed Products, must have the access features built into the product. These products, such as information kiosks, copiers, or other similar products that do not permit a user to install or connect assistive technology, must be designed so that an end user can operate the product, without having to modify it. Also, multimedia presentations that require captioning and descriptive video, must have these features built into the product, as it is impractical to expect end users to add on their own captions or descriptions. However, for most products -- such as software, web pages, and computers - achieving compatibility with assistive technology is the goal of the standards.

A.3.I. Covered actions

The requirements of section 508 apply to an agency's procurement of EIT, as well as to the agency's development, maintenance, or use of EIT. These Questions and Answers address issues related to an agency's procurement of EIT. (Individuals with disabilities may only enforce section 508 with respect to procurements. However, they may also enforce rights under sections 501 and 504 of the Rehabilitation Act, which impose related obligations on agencies.)

A.3.ii. If an agency uses in-house staff to develop products (e.g., training films, videotapes, websites, software applications, etc.) are these products required to meet the section 508 standards even though a procurement action was not involved?

Yes. The requirements of section 508 apply to an agency's procurement of EIT, as well as to the agency's development, maintenance, or use of EIT irrespective of the origin of the EIT (in-house development or commercially acquired). See A.3 with respect to type of work section 508 covers.

A.3.iii. If an EIT item is maintained or developed by both contractor and government employees, is it covered by the section 508 standards?

Yes. Unless an exception applies, if the product is a deliverable under a contract it must conform to the applicable standards regardless of the mix of labor used to produce it.

A.4. Do the requirements of section 508 apply to acquisitions other than those for EIT?

No. (See also section B.1.ii, below.)

A.5. Are there regulations implementing section 508?

Yes, there are two regulations addressing the requirements of section 508.

i. Access Board Standards. The first regulation implementing section 508 was issued by the Architectural and Transportation Barriers Compliance Board (the "Access Board"), an independent Federal agency, whose primary mission is to promote accessibility for individuals with disabilities. This regulation is referred to as the Access Board's "standards."

The standards, along with an explanatory preamble, were published in the *Federal Register*, as a final rule, on December 21, 2000 (65 Fed. Reg. 80499). The standards are codified at 36 CFR Part 1194 and may be accessed through the Access Board's web site at <http://www.access-board.gov>.

The Access Board's standards consist of several subparts which, among other things:

- define EIT (see 36 CFR 1194.4);
- set forth "technical provisions" that:

- address the required functionality / performance of specific technologies and product categories (see "Subpart B" of the Access Board's standards);
- identify broader functional performance criteria to cover technologies or components for which there is no specific provision in Subpart B -- e.g., because the technology or product does not yet exist or was not contemplated by the Access Board during the promulgation of the standards (see "Subpart C" of the Access Board's standards); and
- include requirements for accessible information, documentation, and support for EIT (see "Subpart D" of the Access Board's standards);
- define agencies' authority to consider EIT that does not meet the applicable technical provisions in Subpart B, but provides equivalent facilitation that meets the functional performance criteria of Subpart C (see 36 CFR 1194.5); and
- set forth some of the exceptions to the requirement to buy EIT that meets the applicable technical provisions (see 36 CFR 1194.3).

The Access Board's standards become enforceable on June 21, 2001 (see section H.2., below).

ii. *FAR Rule*. The second rule issued to implement section 508 amends the Federal Acquisition Regulation (FAR) to ensure that agency acquisitions of EIT comply with the Access Board's standards. The entire FAR is found at 48 CFR Chapter 1, located at <http://www.arnet.gov/far/>. The FAR change implementing section 508 was published along with an explanatory preamble in the *Federal Register* on April 25, 2001 (66 Fed. Reg. 20894) and is effective as of June 25, 2001 (see section H, below). The FAR rule can be found at <http://www.section508.gov>.

A.6. Does section 508, as implemented by the Access Board's standards and the FAR, impose the same obligations on agencies and contractors?

No. Although the FAR uses the term "compliance" with respect to both agencies and contractors, the nature of their respective responsibilities differs.

Agencies are responsible for complying with section 508 *as a whole*, including identification of applicable Access Board technical provisions (see sections C and D, below) and making nonavailability and exception determinations (see sections F and G, below).

Contractors interested in selling EIT to the Federal government are responsible for designing and manufacturing products which meet the applicable Access Board's technical provisions.

A.7. What aspects of the acquisition process are affected by section 508 and its implementing regulations?

Section 508 affects *what* agencies acquire (i.e., the requirements development process), generally not *how* they acquire it (i.e., source selection). See FAR 7.103(o) (addressing acquisition planning), FAR 10.001(a)(3)(vii) (addressing market research), FAR 11.002(f) (addressing needs descriptions), FAR 12.202(d) (addressing requirements documents for commercial item acquisitions), and FAR Subpart 39.2 (addressing the acquisition of EIT).

B. KEY TERMS

B.1. "Electronic and Information Technology" (EIT)

i. What is EIT?

EIT is information technology (IT), as defined at FAR 2.101, and any equipment or interconnected system or subsystem of equipment, that is used in the creation, conversion, or duplication of data or information. In addition to IT, EIT includes:

- telecommunication products, such as telephones;
- information kiosks;
- transaction machines;
- World Wide Web sites;
- multimedia (including videotapes); and
- office equipment, such as copiers and fax machines.

EIT is defined by the Access Board at 36 CFR 1194.4 and in the FAR at 2.101.

ii. Is EIT limited to products?

No. EIT, like IT, also includes services. For example, some agencies seek to satisfy their desktop computing needs through so-called "seat management" service contracts. Under a seat management arrangement, the contractor provides the software, hardware, and technical support services necessary to support full service desktop computing resources to the agency for a given period of time. Although the agency does not acquire title to the hardware and software, the agency would still need to comply with section 508 in acquiring desktop computing resources.

As another example, agencies acquiring help desks must ensure that providers are capable of accommodating the communications needs of persons with disabilities, consistent with Subpart D of the Access Board's standards. An agency help desk may need to communicate through a teletypewriter (TTY) – i.e., equipment that transmits coded signals across a telephone network. The help desk provider must also be familiar with such features as keyboard access and other options important to people with disabilities.

B.2. "Comparable access"

i. What must an agency do to ensure its acquisitions of EIT provide "comparable access"?

Unless an exception applies, an agency's obligation to provide comparable access under section 508 is satisfied by acquiring EIT that meets the applicable technical provisions in Subparts B, C, and D of the Access Board's standards, either directly or through equivalent facilitation (see section B.3, below). Comparable access is not required if it would impose an undue burden on the agency. (See sections B.6 and G.6, below.)

ii. How should an agency proceed in identifying "applicable" technical provisions in Subparts B, C, and D of the Access Board's standards to ensure acquired products provide comparable access?

Agencies should first look to the provisions in Subpart B to determine if there are specific technical provisions that apply to the EIT need they are seeking to satisfy.

If there are applicable provisions in Subpart B that fully address the product or service being procured, then the agency need not look to Subpart C. Acquired products that meet the specific technical provisions set forth in Subpart B will also meet the broader functional performance criteria in Subpart C.

If an agency's procurement needs are not fully addressed by Subpart B, then the agency must look to Subpart C for applicable functional performance requirements.

Agencies must also remember the additional considerations of Subpart D. Subpart D requires that: (a) product support documentation provided to end users shall be made available in alternate formats upon request at no additional charge; (b) end users shall have access to a description of the accessibility and compatibility features of products in alternate formats or methods upon request, also at no additional charge; and (c) support services (e.g., help desk) for products shall accommodate the communication needs of end users with disabilities.

For example, if an agency were to enter into a seat management contract for desktop computing resources, the hardware and software to be provided by the contractor would be required to meet the provisions in section 1194.26 (Desktop and Portable Computers), and 1194.21 (Software Applications and Operating Systems) of Subpart B of the Access Board's standards. If these provisions fully addressed the agency's procurement software and hardware needs, the agency would also be in compliance with Subpart C. If some or all of the features were not covered by Subpart B, the agency would also have to look to Subpart C. With respect to the support services provided under the seat management contract, the agency would also need to take into account any appropriate information, documentation, or support requirements in Subpart D.

In all cases, agencies, when evaluating offers, must consider products that provide equivalent facilitation (see section B.3, below).

B.3. "Equivalent facilitation"

i. What is equivalent facilitation?

The Access Board's standards provide that agencies may accept EIT offered by vendors which uses designs or technologies that do not meet the applicable technical provisions in Subpart B but provide substantially equivalent or greater access to and use of a product for people with disabilities. (See 36 CFR 1194.5.) This is referred to as "equivalent facilitation."

Equivalent facilitation is not an exception or variance from the requirement to provide comparable access. Rather, it is a recognition that technologies may be either developed or used in ways not envisioned by the technical provisions in Subpart B but still result in the same or better functional access as would be provided by strictly meeting the provisions in Subpart B. Functional outcome – not form – is the key to evaluating whether a technology results in "substantially equivalent or greater access." In effect, meeting the functional performance criteria in Subpart C of the Board's standards is the test for equivalent facilitation.

For example, an information kiosk which is not accessible to a person who is blind might be made accessible by incorporating a telephone handset connected to a computer that responds to touchtone commands and delivers the same information audibly that is provided on the screen.

In short, the concept of equivalent facilitation is designed to allow the marketplace to offer innovative solutions. For this reason, agencies must draft their solicitations for EIT so that products offering equivalent facilitation are considered along with those that strictly meet the technical provisions of Subpart B of the standards.

ii. Is there a preference for a product that strictly meets the technical provisions of Subpart B over a product that provides the same or greater accessibility through equivalent facilitation?

No. Purchase of either EIT product would satisfy an agency's obligations under section 508. Award should be made to the source whose offer is most advantageous to the Government based on the agency's source selection criteria (which would include cost or price and may include quality).

Note: Offered products and services may provide greater access than required by the Access Board's standards. An agency may, but is not required, to give additional evaluation credit for such greater access.

iii. What is the difference between "equivalent facilitation" and "alternative means of access"?

Equivalent facilitation focuses on whether an EIT product provides access that is equal to or greater than that required in the technical provisions in Subpart B of the Access Board's standards. By contrast, an alternative means of access focuses on the accessibility of the information and data, rather than the technology. Under section 508, agencies have a statutory obligation to make information and data available by an "alternative means of access" when acquiring EIT that meets the applicable technical provisions of the Access Board's standards would impose an undue burden. (See 36 CFR 1194.4 and section B.6.ii, below.)

Agencies have additional obligations under sections 501 and 504 of the Rehabilitation Act, including the obligation to provide employees with disabilities "reasonable accommodations." "Reasonable accommodation" focuses on the needs of a particular individual with a disability. "Equivalent facilitation," instead, focuses on whether the technology itself is designed to afford a specific degree of accessibility – e.g., that which would have been provided if the product or service strictly adhered to the specific technical provisions of Subpart B.

B.3.iv Who makes the determination that a product meets equivalent facilitation?

The vendor may assert that its product meets or exceeds the level of accessibility required by a particular standard through equivalent facilitation. The agency must determine whether a standard is met through equivalent facilitation in accordance with agency guidance and in consultation with, if necessary, the agency 508 coordinator and/or other agencies with technical expertise in accessible EIT, such as the Access Board. If an agency violates section 508 because the product did not, in fact, meet a standard through equivalent facilitation, the agency may still be liable.

B.4. "Assistive technology"

What is assistive technology?

Assistive technology is adaptive equipment that people with disabilities commonly use for information and communication access. See 36 CFR 1194.4. In many cases, the Access Board's technical provisions require compatibility with assistive technology devices. For example, if an agency is acquiring telecommunications products, the standards require that the EIT either contain a TTY or be compatible with TTYs. If the product doesn't provide TTY functionality, it must provide a standard non-acoustic connection point for TTYs. See 36 CFR Part 1194.23.

In some cases, the standards require that the acquired EIT be readily usable without the need for assistive devices. This is the case, for example, for self-contained, closed products such as information kiosks. See 36 CFR Part 1194.25.

B.5. "Nonavailability"

What is nonavailability?

Nonavailability refers to circumstances where no commercial items are available that meet the applicable Access Board's technical provisions (directly or through equivalent facilitation) in time to satisfy the agency's delivery requirements. If products are available that meet some, but not all, applicable provisions, agencies cannot claim a product as a whole is nonavailable just because it does not meet all of the applicable technical provisions. The requiring official must document nonavailability in writing. See FAR 39.203(c) and 36 CFR 1194.2(b). See section F, below, for additional discussion.

B.6. "Undue burden" and "alternative means of access"

i. What is undue burden?

The Access Board's standards and the FAR define an undue burden as a significant difficulty or expense. See 36 CFR 1194.4 and FAR 39.202. In determining whether acquiring EIT that meets all or part of the applicable technical provisions of the Access Board's standards would impose an undue burden, an agency must consider all resources available to its program or component for which the supply or service is being acquired. Undue burden determinations must be documented. See section G.6, below, for additional discussion.

ii. If an agency determines that the acquisition of EIT that meets the applicable technical provisions of the Access Board's standards would impose an undue burden, does it have any remaining obligations under section 508?

Yes. The statute requires that the information and data be provided to individuals with disabilities by an *alternative means of access*. For example, if an agency wishes to purchase a computer program that generates maps denoting regional demographics, but determines that it would constitute an undue burden to purchase an accessible version of such a program, the agency would be required to make the information provided by the program available by alternative means to users with disabilities. Alternative means of access focuses on the provision of the information and data in an accessible manner -- as opposed to the accessibility of the product itself. Thus, in the example provided above, alternative means of access for an individual who is blind might mean providing a hard copy description of the information in Braille or providing an assistant to help guide the user through the information. Alternative means may include, but are not limited to: voice, fax, relay service, TTY, qualified sign language interpreters, Internet posting, captioning, text-to-speech synthesis, readers, personal assistants, or audio descriptions.

iii. Is undue burden the only grounds for acquiring EIT that does not meet the applicable technical provisions?

No. There are several exceptions to the requirements of section 508 (see section G, below).

C. ROLES AND RESPONSIBILITIES

C.1. Who within the agency is responsible for ensuring EIT purchases comply with section 508?

Acquisition of EIT that meets the applicable technical provisions of the Access Board's standards is the shared responsibility of requiring activity officials and contracting officials.

- *Requiring activity officials* (i.e., officials in the program office or organization that is funding and acquiring the EIT) are responsible for --
 - a. identifying applicable technical provisions of the Access Board's standards in their requirements documents (see FAR 11.002 and section B.2.ii, above);

- b. conducting market research to identify what products, if any, are available to meet those provisions or whether an exception applies;
 - c. drafting specifications; and
 - d. documenting nonavailability and undue burden determinations.
- It is expected that agencies will designate requiring activity officials in their organizations to carry out these responsibilities at an appropriately accountable level.
 - Contracting officials are expected to pursue effective acquisition strategies for acquiring EIT.

Thus, successful implementation of section 508 requires the cooperation and coordination of requirements and contracting officials within the agency.

Each agency has a Section 508 Coordinator. This person is often someone in the Chief Information Officer's office. He or she can provide additional information on agency procedures and the steps being taken within his or her agency to implement section 508. For more information, see www.section508.gov/coord.html.

C.2. If EIT is acquired through another agency's contract, which agency is responsible for section 508 compliance?

The requiring agency (i.e., the agency with the need for EIT) is responsible for ensuring that the acquisition complies with section 508. See FAR 39.203(b)(3). This responsibility remains with the requiring agency irrespective of the vehicle used to complete the transaction -- e.g., the requiring activity has this responsibility when its agency is acquiring EIT under a multi-agency contract pursuant to the Economy Act procedures under FAR Subpart 17.5, a government-wide acquisition contract (a so-called "GWAC"), or GSA's Federal Supply Schedules.

This notwithstanding, contracting offices that award indefinite-quantity (IDIQ) contracts (such as those mentioned above) also have responsibilities. They must inform the requiring and ordering activities of the requiring agency which supplies and services the contractors indicate meet (either fully or partially) the applicable technical provisions of the Access Board's standards. They must also provide the source of vendor information regarding section 508 (e.g., the vendor's or other exact web site location). See FAR 39.203(b)(2) (which imposes this requirement on all contracting offices that award IDIQ contracts). In addition, if the servicing agency places the order on the requiring agency's behalf, the servicing agency needs to take necessary management steps before placing the order to ensure that the requiring activity (its customer) has appropriately considered its section 508 obligations with regard to that order.

C.3. Vendor Responsibilities

i. Does section 508 require contractors to manufacture EIT that meets the applicable Access Board's technical provisions?

No. Section 508 requires the government to purchase EIT that meets the applicable technical provisions of the Access Board's standards, with certain exceptions. By doing so, section 508 provides an incentive for EIT manufacturers and designers to ensure that their products are usable by everyone – including people with disabilities.

Agencies are responsible for ensuring that they undertake their acquisitions for EIT consistent with the requirements of section 508, as implemented in the Access Board's standards and the FAR -- which includes identifying applicable section 508 provisions to interested contractors. Similarly, agencies – not contractors – are responsible for making determinations regarding whether any exceptions apply. (See section G.6.vi, below.)

In turn, contractors wishing to do business with the government must provide products and services that meet (either directly or through equivalent facilitation) an agency's stated requirements, including applicable technical provisions from the Access Board's standards as identified by the agency. Contractors (including manufacturers and designers) are under no obligation to consider either section 508 or the Access Board's standards if they do not wish to market their products to the Federal government.

ii. Do vendors have to provide product documentation in alternate formats?

Yes, if it is a deliverable under a contract. Section 1194.41 of the Access Board's standards provides that product support documentation that is provided to end-users must be made available in alternate format upon request. However, it is the agency's responsibility, not the vendor's, to comply with this provision. Typically, agencies will require such documentation from the vendor to be in an alternate format as part of the deliverables required under the contract. The format of the documentation requested from the vendor may vary. For example, an agency may request the documentation in an electronic format that will allow the agency to reprint information in Braille or alternate formats. Other agencies may request the information to be provided by the vendor in Braille, large print, audio cassette or other format as part of the procurement.

C.4 Are subcontractors subject to Section 508?

Section 508 does not impose requirements on contractors or subcontractors. Instead, it only imposes requirements on the product specifications of EIT procured by federal agencies. Prime contractors may enter into subcontracts in the performance of a Federal contract for EIT, but the prime remains obligated to deliver what is called for under the contract (e.g., EIT that meets the Access Board's standards).

C.5. Enforcement and Reporting

i. Who is responsible for enforcing Section 508? Are there any reporting requirements?

Individuals with disabilities are responsible for enforcing the requirements of Section 508. Individuals with disabilities may file a complaint with an agency or bring a civil action in Federal Court for an agency's noncompliance with the requirements of section 508. Section 508(f) requires agencies to provide procedures for resolving complaints by individuals who allege that an agency has failed to comply with the requirements of

section 508 in providing EIT. It states that agencies are to apply the complaint procedures established to implement section 504 of the Rehabilitation Act to resolve administrative complaints related to section 508.

Section 508(d)(2) requires the Attorney General to prepare a biennial report and make recommendations regarding the state of Federal department and agency compliance with the requirements of section 508.

ii. What was the purpose of the Department of Justice's recent government wide survey of federal web sites? Section 508(d)(2) requires the Attorney General to prepare and submit a report and recommendations to the President and Congress regarding the state of Federal department and agency compliance with the requirements of section 508, including any actions regarding individual complaints. The survey was designed to help the Department of Justice assess agency compliance. The Department of Justice and other agencies may use the recommendations and findings in this report to facilitate implementation of section 508 by the Federal government.

C.6 Use of EIT in Federal Agency Training

i. If a Federal agency conducts training and uses multimedia, such as videotapes or computer based training, must the materials developed be accessible under 508?

Yes. Multimedia is considered EIT and, if used by the Federal government, must be accessible unless an exception applies (see sections F and G, below). Section 1194.22 of the Access Board's standards addresses requirements for web-based intranet and internet information and applications. Section 1194.24 addresses video and multimedia products. In addition to the requirements of section 508, agencies also have obligations to their employees under sections 501 and 504 of the Rehabilitation Act.

ii. If a Federal agency is distributing a television or multimedia production or a web-cast presentation, does it have to be open or closed captioned and audio-described?

Section 1194.24(c) and (d) of the Access Board's standards require that all training or informational video and multimedia productions which support the agency's mission and which have audio information or visual information that is necessary for the comprehension of the content, be captioned or audio described. Hence, if the production is multimedia (e.g. image and sound) and is considered "training or informational," then it must meet the applicable requirements of 1194.24 (c) and (d) of the Access Board's standards. If the production is web-based, regardless of whether it is multimedia, such as a live webcast of a speech, then it must also meet the applicable requirements of 1194.22.

iii. Does the requirement to open or close caption and audio describe apply to productions that have a limited purpose, scope, and shelf life or contain quickly "perishable" information?

Section 1194.22 of the Access Board standards applies requirements to web-based intranet and internet information and applications without regard to the perishable nature

of a production. Similarly, section 1194.24 addresses video and multimedia products without regard to the shelf life of a production.

iv. Do videotapes of briefings or "raw or stock" film footage for documentation purposes have to be captioned or audio described? What if the videotape is later played for an audience? Do graphs and charts used in the briefing have to be audio described?

Briefings or other recordings made for purposes of documentation are not considered "training or informational videos." As noted in the preamble to the Access Board's final rule, section 1194.24 does not require that a videotape recorded by a field investigator to document a safety violation be captioned or audio described. However, if such a videotape were subsequently used as part of a training or informational presentation, it would have to be captioned and audio described. (See 65 Federal Register 80517, December 21, 2000.) Any graphs or charts that are not described in the narration of the video would have to be audio described if the visual information was necessary for the comprehension of the content.

v. Is the requirement to open or close caption, and to provide audio description specific to English?

No. The requirement to caption (i.e., to provide access to audio information for persons with hearing impairments) and provide audio description applies irrespective of the language. It is recommended that captioning and audio description be in the same language as the content of the production. For example, Spanish audio should be captioned in Spanish. There is no requirement to provide captioning in a language different from the content of the production (e.g., English audio need not be in Spanish or vice versa.) **vi. Must the lyrics in songs embedded in productions be open or closed captioned?**

This answer depends on whether the lyrics are considered content essential for comprehension. For instance, a production that features a dialogue between two people while a radio softly plays a song in the background should have the conversation in the foreground captioned. However, since the song from the radio is not essential for comprehension, the captions could simply indicate that music is playing in the background.

C.7. "Agency Websites"

i. Must Portable Document Format (PDF) files that are displayed on a Federal website meet the Access Board's standards?

Yes. Section 1194.22(m) requires the web page containing a PDF file to include a link to a plug-in that complies with the software requirements of 1194.21(a) through (l). In addition, section 1194.22(a) requires provision of a text equivalent for every non-text element.

A PDF file is a file format created using Adobe Acrobat. Many agencies use PDF files to post documents to their web site because they create an exact representation of the

original document. In order to view a PDF file, a user must use a browser "plug-in." Thus, the agency has two options when addressing PDF content and the Access Board's standards. First, it can ensure that its PDF file is accessible and include a link to a PDF reader that conforms to the software requirements of section 1194.21. Alternatively, if such a plug-in is unavailable, section 1194.22(k) permits the agency to provide a link to a duplicate file that contains the same information in an accessible format.

ii. Can a federal agency provide alternate web pages for users with disabilities to supplement web pages that have innovative features which are inaccessible to assistive technologies? While the provisions in 36 CFR 1194.22 allow web authors to be creative and innovative in the use of new technologies, section 1194.22(k) requires that a text-only web page be provided only as a method of last resort for bringing a web site into compliance with the other requirements in 1194.22. This practice is discouraged because it leads to problems of multiple document updating and servicing. (When used, text-only pages must contain equivalent information and functionality as the primary pages and must be updated whenever the primary pages change.)

C.8 Are Section 508 access requirements satisfied if the agency provides such access following a request for it, as opposed to in anticipation of a request for access?

No. Unless an exception applies, the requirements of section 1194.24 (c) and (d) of the Access Board's standards are to be met at the time the product is developed or, in the case of a procurement, when the product is delivered (unless an exception applies). For example, the production of a training video, which is covered by the section 508 standards, must include the incorporation of open or closed captioning and audio description during the development phase, not after a request is made for it.

D. DEFINING REQUIREMENTS FOR EIT

D.1. How does section 508 affect the requirements development phase of an acquisition?

Section 508 requires agencies to take additional considerations into account when defining their needs for EIT – namely the Access Board's standards. As noted above, section 508 affects *what* an agency buys, not generally *how* the agency buys it.

D.2. Must requiring officials consider all the Access Board's technical provisions and functional performance criteria each time they purchase EIT?

No. Requiring officials need only consider all *applicable* technical provisions from the Access Board's standards to ensure acquired products provide comparable access (see section B.2.ii, above).

D.3. Is an agency prohibited from buying EIT that does not meet all applicable technical provisions?

No. If an exception applies preventing an agency's acquisition of EIT that meets all of the applicable technical provisions (e.g., no such products are available in the commercial marketplace), the agency may acquire EIT that meets some of those provisions.

Similarly, if an exception applies to an agency's acquisition of EIT that meets some of the applicable provisions, the agency may acquire EIT that does not meet *any* of those provisions.

D.4. Is an agency ever required to fundamentally alter its needs in order to comply with section 508?

No. The Access Board's standards state that an agency is not required to alter its acquisition requirements in order to comply with section 508 if the alteration would be so fundamental that the agency would no longer be procuring EIT that met its needs.

For example, if an agency needs to meet certain security needs by acquiring secure telephone units that are all analog, the agency would not be required to buy digital phones if such phones failed to meet the agency's security needs even if the digital phones fully meet the applicable technical provisions of the Access Board's standards and the analog phones meet only some of the applicable technical provisions.

E. THE ACQUISITION PROCESS

E.1. What steps does the FAR require an agency to take when acquiring EIT?

First, the requirements (program) office must read the Access Board standards, and determine which technical provisions apply (see section B.2.ii, above).

Second, the requiring official must perform market research to determine the availability of products and services that meet the applicable technical provisions. In determining availability, requiring officials should consider, among other things, information on vendor web sites and the government's section 508 web site (www.section508.gov).

Third, the requiring official must identify which technical provisions, if any, do not apply due to an exception, such as nonavailability or undue burden. (See sections F and G, below, for further discussion on nonavailability, undue burden and other exceptions, and associated contract file documentation requirements.).

Fourth, technical specifications and minimum requirements must be developed considering the results of market research and agency needs. The requiring official must submit this information along with the purchase request, including nonavailability or undue burden documentation as appropriate, to the contracting officer.

Finally, the contracting officer must draft and issue a solicitation to receive offers from interested sources or consider placing an order under a delivery order or task order contract. Proposal evaluation may yield additional information that could require reconsideration of the need for an exception (either retracting or invoking an exception, such as nonavailability).

As noted above, an agency must consider EIT that offers equivalent facilitation and should state in its solicitation that it will do so (see section E.4., below)

E.2. Where an agency uses a best value "trade-off" source selection process, may it trade off applicable technical provisions of the Access Board's standards where an offer provides strong technical merit, strong past performance, or a lower price?

The Access Board's technical provisions are mandatory requirements that must be met (directly or through equivalent facilitation) unless (a) the product or service (if it is a commercial item) is not available, (b) an exception applies (such as undue burden), or (c) meeting the applicable provisions would require the agency to alter its requirements to the point where the procured EIT would not meet its needs. For example, if a product is available that meets the technical provisions of the Access Board's standards, the agency would not be required to make the purchase if significant difficulty or expense made the purchase an undue burden for the agency. Note that undue burden cannot be established simply by demonstrating that, as between products that could meet the agency's need, the cost of a product that meets the technical provisions is higher than that for a product that does not. Instead, an agency must consider all resources available to its program or component for which the supply or service is being acquired (see section G.6.iii, below).

Where no offered products meet all of the technical provisions, the Access Board's standards require an agency to "procure the product that best meets the standards" (see 36 CFR 1194.2(b)). This may be the product that meets the most applicable technical provisions, but alternatively could be one that meets fewer technical provisions but which better addresses the accessibility needs of the intended end users.

Best value trade-offs are still possible (and in fact required) if the products being compared meet the technical provisions to the same degree (e.g., the products being compared fully meet applicable technical provisions; or the products being compared partially meet the applicable technical provisions to the same extent). For example, if two of three proposals offer products that fully meet the technical provisions and the third proposal partially meets them, traditional trade-offs between the two offers that fully meet the applicable provisions as to technical merit, price, and past performance are required. However, absent a determination of undue burden, the agency could not make trade-offs between the proposals that fully meet the applicable provisions and those that only partially meet them.

E.3. Does the FAR provide a specific clause for acquisitions of EIT?

There is no FAR clause addressing section 508 at this time. The FAR Council is carefully considering whether clauses are needed, and welcomes comments on this issue that would inform a potential rulemaking. (Send comments to the FAR Secretariat (MVP), 1800 F Street, NW, Room 4035, Attention Ms. Laurie Duarte, and please cite "Section 508" in the correspondence.)

E.4. What are examples of issues an agency may wish to consider when drafting a solicitation to acquire EIT?

Among other things, agencies should consider drafting solicitations in a way that they may accept a product or service that partially meets the applicable technical provisions if no product is available that meets all applicable technical provisions. Solicitations should

also indicate that products that provide equivalent facilitation will be considered along with those that meet the applicable specific technical provisions (in Subpart B) of the Access Board's standards.

Sample language addressing the evaluation of offers for EIT (that could appear in section "M" of a solicitation) might include the following. (**NOTE:** This is illustrative strawman language that must be tailored to the specific requirements of an individual procurement. Like all information in this document, agency personnel must consult appropriate officials within their agencies for formal advice.)

To be considered eligible for award, offerors must propose goods and/or services that meet the applicable provisions of the Access Board's standards as identified by the agency. Alternatively, offerors may propose goods or services that provide equivalent facilitation. Such offers will be considered to have met the provisions of the Access Board's standards for the feature or component providing equivalent facilitation. If none of the offers that meet all applicable provisions of the Access Board's standards could be accepted without imposing an undue burden upon the agency or component, or if none of the offerors propose goods or services that fully meet all of the applicable Access Board's provisions, those offerors whose products or services meet some of the applicable provisions will be considered eligible for award. Award will not be made to an offeror meeting all or some of the applicable Access Board provisions if award would impose an undue burden upon the agency.

E.5. Will agencies have a way of obtaining standardized product testing results to determine if EIT meets the Access Board's technical provisions?

Currently, there are no uniform testing processes for section 508. In May 2001, the agencies with lead responsibilities for the implementation of section 508 convened an Accessibility Forum to facilitate discussion among the EIT industry, disability advocacy groups, and assistive technology vendors on ways to convey the extent to which particular products (or services) meet the technical provisions of the Access Board's standards.

E.6. Vendor EIT information on websites

i. Will there be a web site providing information on how manufacturers have addressed the Access Board's technical provisions?

Yes. The site will consist of information offered by vendors describing how their offerings meet the technical provisions of the Access Board's standards. The section 508 web site will link to a portal that allows vendors to voluntarily maintain information on their own sites with links to the section 508 web page. This arrangement will allow vendors to more easily update their information, given that how their products and services meet the technical provisions will likely be improving with each version and product model. Industry representatives have been working to develop a template so that vendors may present their information in a structured format if they choose. At some point, it is possible that manufacturers may voluntarily label products based on industry

developed measures to enable end users to more easily identify how a product meets the applicable technical provisions.

Industry representatives are encouraged to visit the section 508 web site, www.section508.gov, and follow the instructions regarding participation.

ii. Does the Federal government have a 'logo program' indicating which products meet 508 standards?

No. The Federal government does not currently have a section 508 logo (such as the Energy Star) that attaches to a product to indicate that the product conforms to the section 508 standards.

iii. Are vendors required to post information regarding whether their products meet the Access Board standards on a web site? Couldn't this result in a compromise of intellectual property?

Vendors are not required to post information regarding whether or not their products meet the Access Board's standards on a web site (unless they choose to respond to a solicitation, or are awarded a contract, that says otherwise). As a general matter, vendors may disseminate information addressing whether their products meet the Access Board standards in any manner and level of detail they choose. Vendors are encouraged to use the Buy Accessible website on www.section508.gov to facilitate the market research efforts of the government in identifying conforming products. However, they are not required to use this means of providing information to the government. The purpose of the website is to improve buyer awareness of those EIT offerings that meet all or some of the Board's standards, not to force the revelation of particular technical solutions. Generally, information the government has about a winning offer may be obtained by the public under the Freedom of Information Act unless the information falls under the exemption in 5 U.S.C. 552(b)(4) for business "trade secrets and commercial or financial information obtained from a person that is privileged or confidential."

iv. Do vendor web sites advertising EIT products or providing information about EIT products to the federal government have to meet the section 508 standards? No. Section 508 does not require a vendor's web site to meet the Access Board's standards. Section 508 applies to Federal departments or agencies, including the United States Postal Service.

F. NONAVAILABILITY

F.1. Under what circumstances may an agency conclude that no EIT is available that meets the Access Board's technical provisions?

An agency may conclude that EIT meeting the applicable technical provisions of the Access Board's standards is not available (and purchase EIT that does not meet those provisions) when it cannot find a commercial item that both meets applicable Access Board's technical provisions and can be furnished in time to satisfy the agency's delivery requirements. If products are available that meet some, but not all, applicable provisions, agencies cannot claim a product as a whole is nonavailable just because it does not meet

all of the applicable provisions. Agency acquisitions must comply with those applicable technical provisions that can be met with supplies or services that are available in the commercial marketplace in time to meet the agency's delivery requirements. Nonavailability determinations must be documented (see sections F.2 and F.3, below).

The concept of nonavailability is recognized in the Access Board's standards (at 36 CFR 1194.2(b)) and the FAR (at 39.203(c)) because agencies may find that some of their needs cannot be satisfied with EIT that meets all the applicable technical provisions. However, as manufacturer offerings of products that meet the applicable technical provisions increase over time, incidents of nonavailability will decrease.

F.2. What should be included in a nonavailability determination?

The requiring official must document in writing the nonavailability and provide a copy of this documentation to the contracting officer for inclusion in the contract file. FAR 39.203(c)(2) requires that the documentation must include a description of market research performed and identification of the applicable technical provisions that cannot be met with products or services available from the marketplace. Agency procedures (if any) must be followed.

F.3. Who is the "requiring official" who makes the nonavailability determination?

The FAR requires that determinations of nonavailability be made by requiring activity officials (not contracting officials) unless agencies provide otherwise in their procedures. The requiring official is an official in the program office or organization that is funding and acquiring the EIT. The FAR requires that the documentation of nonavailability be included in the contract file.

F.4 If an agency has appropriately determined and documented that commercial items are not available that meet applicable technical provisions, must it also determine that an exception applies?

No. Nonavailability is an independent basis for acquiring EIT that does not meet the applicable Access Board's technical provisions. See FAR 39.204(e)(2)(ii). Undue burden documentation would be required if products meeting all (or some) of the standards are commercially available but would create an undue burden on the agency to acquire. (In other words, when a product meeting the standards is commercially available, it is treated no differently than a non-commercial item with respect to application of the undue burden justification.) Agencies should document commercial nonavailability in accordance with agency procedures to assist in defending the agency's decision in the event of a complaint. (see section F.2., above).

G. EXCEPTIONS

G.1. Are there any exceptions to the requirement to acquire EIT that meets the technical provisions of the Access Board's standards?

Yes. Agencies are not required to acquire EIT that meets the technical provisions of the Access Board's standards if the acquisition:

- a. is a micro-purchase made prior to January 1, 2003 (FAR 39.204(a));
- b. is for a national security system (FAR 39.204(b) and 36 CFR 1194.3(a));
- c. is acquired by a contractor incidental to a contract (FAR 39.204(c) and 36 CFR 1194.3(b));
- d. is located in spaces frequented only by service personnel for maintenance, repair, or occasional monitoring of equipment (FAR 39.204(d) and 36 CFR 1194.3(f)); or
- e. would impose an undue burden on the agency (FAR 39.204(e) and 36 CFR 1194.2)

In addition, agencies are not required to fundamentally alter their needs in order to comply with section 508. (See section D.4, above.)

G.2. The micro-purchase exception

i. Does the micro-purchase exception cover all purchases under \$2,500?

No. The exception is for a one-time purchase that totals \$2,500 or less, made on the open market as opposed to under an existing contract. A software package that costs \$1800 is not a micro-purchase if it is part of a \$3,000 purchase -- or a \$3,000,000 purchase. Orders placed against the Federal Supply Schedule, GWACs, multi-agency contracts, or IDIQ contracts are not micro-purchases because they are not made on the open market.

ii. Why is the micro-purchase exception temporary?

The FAR provides an exception for micro-purchases until January 1, 2003. Many micro-purchases are conducted by program officials (i.e., end users) with the help of government-wide purchase cards. The temporary exception reflects the difficulty program officials face in identifying products that meet the technical provisions of the Access Board's standards before industry's section 508-related manufacturing of products becomes commonplace. By the time this exception expires, many products are expected to meet the Access Board's technical provisions and may be so labeled by the manufacturer. In the meantime, contracting officers and purchase card holders are strongly encouraged to acquire EIT that meets the applicable technical provisions to the maximum extent practicable.

iii. Are acquisitions conducted with a government-wide commercial purchase card covered by section 508?

If the card is used to conduct an open-market purchase of \$2,500 or less and the action occurs prior to January 1, 2003, the action would not be covered by the procurement provisions of section 508. By contrast, if the action occurs after January 1, 2003, it would be covered by those provisions. In addition, if the card is used to pay for an order (in any amount) under an existing indefinite-quantity contract placed on or after June 25, 2001 (the date the FAR rule takes effect), the action would be covered by those provisions.

G.3. The national security exception

i. Is there guidance defining what constitutes a national security system?

Yes. The FAR defines national security system at FAR 39.002. The term is also defined in section 5142 of the Clinger-Cohen Act of 1996 (40 U.S.C. 1452). For additional discussion, see the preamble discussion regarding 36 CFR 1194.3(a) of the Access Board's standards.

ii. Are some types of secure electronic equipment, such as secure telecommunications devices that are specifically designed to prevent eavesdropping and other forms electronic attack, subject to section 508 requirements? For example, some products are certified as "TEMPEST-tested," which means that extreme measures have been taken to harden them against intrusion. Are those products required to conform to the Access Board standards?

Unless an exception applies, these technologies are considered EIT and must meet the Access Board standards. If "Tempest-tested" telecommunications systems are being used in an application covered by the national security exception, they would not need to meet Access Board standard 1194.3(a).

G.4. The "incidental to a contract" exception

i. Do the standards require a contractor's workplace to be Section 508 compliant?

No. Unlike some other civil rights laws (such as section 504 of the Rehabilitation Act), the section 508 responsibilities do not follow the receipt of Federal funds to contractors, but only apply to the product and services being procured by Federal agencies. Section 508 applies only to Federal agencies – including their EIT products and services that are deliverables under a contract. Section 508 does not apply to a contractor's own internal workplace EIT.

For example, if a Federal agency enters into a contract to have a web site developed, the web site is required to meet the applicable technical provisions of the Access Board's standards because the web site is the deliverable that is being acquired by the agency (unless, of course, an exception applies). However, the contractor's office system used to develop the web site does not have to meet the technical provisions, since its equipment is incidental to the contract.

ii. Can a purchase qualify for this exception based strictly on the fact that it is a small add-on purchase to a larger contract?

No. While a purchase may be considered "incidental" in some situations based on its size, "incidental" in the context of section 508 means the product is being used in-house by the contractor. The size of the purchase is irrelevant for purposes of this exception.

G.5. The "back office" exception

G.5.i. What is the "back office" exception?

The so-called "back office" exception, discussed at section 1194.3 of the Access Board's standards, states that "Products located in spaces frequented only by service personnel for maintenance, repair, or occasional monitoring of equipment are not required to comply with this part."

G.5.ii. How is the "back office" exception applied?

Hardware. Two conditions must be met before an agency uses this exception when procuring a product. First, the agency must intend to locate the product in a physical space frequented only by service personnel. Second, the use of the product by the service personnel must be for maintenance, repair or occasional monitoring. If both conditions are met, the product does not have to meet the standards.

Hardware that might meet these dual conditions includes: telephone equipment placed on racks in a "closet" or small room and network routers and storage devices or servers located in rooms or areas frequented only by service personnel for maintenance, repair, or occasional monitoring of equipment.

Software. Software which is installed or operated on a product which falls under this exception would be exempt from the standards if the software application could only be operated from the physical place where the product is located. This might include specialized diagnostic software. By contrast, if the software could be operated from a remote workstation, the software would be subject to the Access Board's standards irrespective of who is using it since the product interface is not located in a physical space which meets the criteria for this exception.

G.6. The undue burden exception (see also section B.6, above)

i. What is the undue burden exception?

Agencies do not have to acquire EIT that meets the applicable technical provisions if doing so would impose an undue burden on the agency. Undue burden is a longstanding concept in disability rights law. In the context of section 508, it means that an acquisition imposes a significant difficulty or expense, taking into account all agency resources available to the program or component for which the EIT is being procured. 36 CFR 1194.4 and FAR 39.202, 39.204(e)(1). An undue burden determination must be applied on a case-by-case basis.

If an agency invokes the undue burden exception, it must document in writing the basis for the decision and provide documentation for inclusion in the contract file (see sections G.6.iii and iv, below). In addition, the statute requires the information and data to be provided to disabled individuals by an alternative means of access (see section B.6.ii, above). Agencies have additional responsibilities under sections 501 and 504 of the Rehabilitation Act.

ii. Why isn't undue burden more completely defined in the regulations?

Undue burden was defined by the Access Board consistent with the terms "undue burden" and "undue hardship" in the Rehabilitation Act and the Americans with

Disabilities Act. The preamble to the Board's rule included an extended discussion of the term (see 65 FR 80500, at page 80506, December 21, 2000). Substantial case law provides further guidance to agencies in the application of the undue burden exception. The Access Board chose not to disturb the existing understanding of the term by trying to redefine it. The FAR rule also follows this approach.

iii. Can "significant expense" be established simply by demonstrating that a product that meets the applicable technical provisions is significantly more expensive than one that does not?

No. In determining whether acquisition of EIT that meets all or part of the applicable technical provisions of the Access Board's standards would impose an undue burden, an agency must consider all resources available to its program or component for which the supply or service is being acquired. Undue burden cannot be established simply by demonstrating that, as between products that could meet the agency's need, the price of products that meet the applicable technical provisions is higher than that of others that do not. Such an analysis is insufficient since it fails to consider all resources available to the program or component.

iv. What should be included in the undue burden determination?

The FAR requires the requiring activity official to document in writing the basis for an undue burden decision and provide a copy to the contracting officer for inclusion in the contracting file. See FAR 39.204(e)(2)(i). The documentation must clearly explain why meeting the applicable technical provisions imposes an undue burden.

The law and regulations do not specify the exact content or format of documentation to support an undue burden determination. Any agency documentation (and approval) procedures for undue burden must be followed. Documentation to support an undue burden determination based on significant expense could describe, among other things: the applicable technical provisions of the Access Board's standards, the market research performed to locate commercial items that meet the applicable technical provisions, the specific provisions that cannot be met as a result of undue burden, the expected cost of acquiring EIT that meets the applicable technical provisions along with an explanation of how costs were estimated, and a description of all the funds available to the program or component for which the supply or service is being acquired.

v. Who is the "requiring activity official" who makes the undue burden determination?

See the response to Question F.3, above.

vi. May an agency shift the responsibility for making undue burden determinations to vendors (i.e., by requiring interested sources who offer EIT that meets the applicable technical provisions to explain why the purchase of such EIT would not impose an undue burden on the agency)?

No. The responsibility for making an undue burden determination rests with the agency. Only the agency is in a position to determine the difficulty or expense acquisition of EIT

that meets the applicable technical provisions would impose on an agency and to know the resources available to its program or component for which the supply or service is being acquired.

ii. What are the historical financial threshold and circumstances that appear to satisfy the courts relative to "undue burden" justifications by the government?

Undue burden cases are unique and require an examination of resources on a case-by-case basis. A general discussion on undue burden as it relates to 508 is offered on <http://www.section508.gov/docs/undueburdenarticle.htm>. This article was not written by a Federal employee or on behalf of the Federal government. The views represented are solely the views of the author. (The article is reprinted on the site with permission from the August 2001 issue of Contract Management magazine, published monthly by the National Contract Management Association in Vienna, VA.)

G.7. Legacy Systems

i. Are procurement actions to maintain existing legacy systems (that do not meet the technical provisions of the Access Board's standards) exempt from section 508?

Perhaps. The answer will depend on the purpose and nature of the action. In some cases, an exception, such as undue burden, might apply. As noted above, however, undue burden determinations must be made on a case-by-case basis.

For example, if an agency is acquiring "patches" to fix minor software errors on a system that is not near the end of its life expectancy and software that meets the applicable technical provisions of the Access Board's standards would not operate with the system, the agency might experience a significant difficulty or expense if it had to prematurely replace its system to accommodate the new software. Thus, the acquisition might fall within the undue burden exception. (In fact, if the maintenance is covered under a contract awarded prior to June 25, 2001, the procurement provisions of section 508 might not be applicable. See section H.3, below.)

By contrast, a finding of undue burden may be difficult to justify if a system is near the end of its life expectancy, the purpose of so-called "maintenance" is to significantly upgrade and update the system or its operating software (such as moving from a very old generation software to a much newer generation software), and the agency the resources for such an upgrade.

ii. Are there any circumstances under which Federal EIT must be retrofitted with EIT that meets the access board's standards? Section 508(a) generally requires that agencies ensure that the EIT they develop, procure, maintain, or use meets the Access Board's standards. To the extent agency resources are available, agencies should consider replacing older, inaccessible EIT with newer more-accessible EIT, where such EIT is used by federal employees or members of the public to access data or information. In addition to helping the agency meet its general obligations under 508(a), such efforts may also help the agency satisfy its obligations under sections 501 and 504 of the Rehabilitation Act.

iii. If an agency has a system in place for broadcasting streaming video, is it required to replace it with a system that meets the standards when the next lifecycle upgrade occurs?

Generally, yes. Multimedia equipment is considered EIT and must meet the Access Board standards. If the equipment was purchased after June 25, 2001, and an exception does not apply, the action is subject to the enforcement provisions of section 508(f).

Multimedia productions, must also meet the applicable Access Board standards irrespective of the equipment used to develop them, and are subject to the same enforcement provisions as multimedia equipment.

G.8. Does acquiring maintenance or support services for an existing system trigger the requirement for the existing system to meet the Access Board's technical provisions?

New maintenance and support contracts on legacy systems do not require the previously owned EIT to meet the technical provisions of Subparts B or C of the Access Board's standards. However, the newly acquired help desk services, training, and product support documentation must meet Subpart D of the Access Board's standards.

G.9. Are agency purchases from Javits-Wagner-O'Day (JWOD) Act nonprofit agencies employing people who are blind or severely disabled (NIB/NISH) or Federal Prison Industries ("FPI," also known as UNICOR) exempt from section 508?

No. Agency purchases from NIB/NISH and FPI are treated as procurements and are subject to section 508. For EIT products and services where NIB/NISH and FPI are mandatory sources, agencies must look to these sources first for EIT that meets the applicable technical provisions of the Access Board's standards. EIT that does not meet the applicable technical provisions may be acquired from these sources only if an exception applies or if EIT that meets the provisions is not available from a commercial source (i.e., nonavailability means EIT is not available from either a mandatory source or the commercial marketplace).

G.10. Does an agency have any remaining obligations under the Rehabilitation Act if an exception applies?

Yes. Even if an exception applies, the agency will still have obligations under sections 501 and 504 of the Rehabilitation Act. These sections require, among other things, that the agency provide reasonable accommodation for employees with disabilities and provide program access to members of the public with disabilities. (If the undue burden exception applies, an agency is required under section 508 to provide an alternative means of access. See section B.6.ii, above.)

G.11. Should agencies keep track of exceptions?

Yes. Agencies will need to track documented exceptions to section 508 for future reporting to the Department of Justice. (Agencies should also keep track of

nonavailability determinations. See section F.2, above.) For this reason, agencies should establish a method of collecting and reporting that information to the Department of Justice for their biennial reports. An agency's CIO office / Section 508 Coordinator can provide more information on the agency's processes for reporting and documenting exceptions. See the section 508 web site, www.section508.gov, to identify individual agency coordinators.

G.12 May an agency exempt an acquisition from the requirements of section 508 if such procurement is undertaken to comply with the Government Paperwork Elimination Act (GPEA)?

No. Agency efforts undertaken to comply with GPEA are not exempt from section 508. EIT developed, procured, maintained or used to meet the objectives of GPEA must also meet the requirements of section 508, i.e., comply with the Access Board's standards where applicable.

GPEA, which was enacted in October 1998, requires agencies generally to provide for the optional use and acceptance of electronic documents and signatures and electronic record keeping, when practicable, by October 21, 2003. OMB annually requires agencies to submit plans describing how they are implementing GPEA; the most recent OMB request was issued on September 24, 2001. In that request, OMB describes factors that agencies should consider in their planning, and among those factors is customer relationship management, including accessibility standards. OMB guidance on implementing GPEA (Memorandum M-00-10, April 2000) can be found on the OMB website, www.whitehouse.gov/omb/memoranda/index.html.

H. APPLICABILITY

H.1. When do the FAR changes requiring acquisition of EIT that meets the applicable technical provisions of the Access Board's standards go into effect?

The effective date of the FAR changes for acquiring EIT is June 25, 2001. (Because this is a major rule, the Congressional Review Act requires a 60-day waiting period from the time the rule is published in the Federal Register, which was April 25, 2001, to the date the rule becomes effective.)

H.2. What is the significance of June 21, 2001?

Beginning June 21, 2001, persons with disabilities may file administrative complaints or bring civil actions in Federal court against agencies that fail to comply with the requirements of section 508. This date was established by operation of the law, which authorizes such actions 6 months after the date the Access Board published its standards as a final rule (which was on December 21, 2000). As a result, agencies may wish to consider following the FAR rule prior to its June 25, 2001 effective date.

H.3. What contract actions must satisfy section 508?

- All contracts awarded on or after June 25, 2001.

- All orders placed on or after June 25, 2001 under IDIQ contracts irrespective of when the underlying IDIQ contract was awarded. (Thus, IDIQ contracts may include items that do not meet the applicable technical provisions of the Access Board's standards; however, any task or delivery order issued for those items must meet an applicable exception.)

i. What are examples of actions that, if they occur on or after June 25th, WILL NOT TRIGGER the section 508 procurement obligations?

- Delivery of EIT purchased under a contract awarded or order placed prior to June 25, 2001.
- Within-scope modifications for the acquisition of EIT under contracts awarded before June 25, 2001 (e.g., small increases in the number of units ordered or changes to the delivery schedule).
- Exercise of unilateral options to acquire EIT under contracts awarded before June 25, 2001.
- Determination of funds availability on a multiyear contract awarded prior to June 25, 2001.
- Award of an IDIQ contract, except for requirements that are to be satisfied by the initial award.

ii. Actions covered. What are examples of actions that WILL TRIGGER the section 508 procurement obligations if they occur on or after June 25th?

- Acquisition of EIT through a contract amendment that falls outside the general scope of a contract awarded prior to June 25th. (This action would constitute a new contract action and would need to be properly justified.)
- Placement of an order for EIT under an IDIQ contract, including a Federal Supply Schedule contract, a GWAC, or a multi-agency contract. (See FAR 16.504 and 16.505 addressing the use of indefinite quantity contracts, except see FAR subpart 8.4 on purchasing from the Federal Supply Schedules.)
- Purchases against blanket purchase agreements (BPAs), whether issued against a Federal Supply Schedule or outside the Schedules program.
- Purchases against basic ordering agreements (BOAs).

H.4. What must an agency do if it has already published a solicitation for EIT without taking section 508 requirements into account and the ensuing contract will not be awarded until on or after June 25, 2001?

If a contract is not going to be awarded until on or after June 25, 2001, the contract will be subject to section 508. To the extent incorporation of the applicable technical provisions of the Access Board's standards change the agency's requirements, the

contracting officer will need to amend the solicitation. The agency should also consider whether an exception might apply, such as nonavailability.

H.5. Does Section 508 apply to a Federal agency's existing EIT procured prior to June 21, 2001?

The Workforce Investment Act of 1998 amended section 508 of the Rehabilitation Act and directed the Access Board to publish standards for developing, procuring, maintaining, or using electronic and information technology. Although the amendments to section 508 were effective on August 7, 1998, there were no standards to measure compliance until the standards published by the Access Board became effective on February 20, 2001. By statute, the enforcement provisions apply to EIT procured after June 21, 2001. (For a discussion on how maintaining EIT which existed prior to June 21, 2001 may be subject to the enforcement provisions of section 508, see sections G.7, G.8, and H.3.)

H.6 If an agency began work on EIT prior to June 21, 2001 that will be developed entirely in-house, but won't be completed until after June 21, 2001, does this EIT have to meet the 508 requirements?

Yes. The Access Board's standards for EIT became effective February 20, 2001 and apply to EIT that is developed, procured, maintained or used by the Federal government, whether conducted in house or through a commercial provider. However, the enforcement provisions, which became effective on June 21, 2001, apply only to EIT products they are procured.

H.7. Presentations

i. Does presentation equipment procured have to meet the Access Board standards?

Yes. Presentation equipment, such as LCD data projectors and laptop computers, are considered EIT and therefore covered by the Access Board's standards, unless an exception applies. If the equipment was procured after June 21, 2001, and an exception does not apply, the action would be enforceable under Section 508(f). See sections G and H for more details.

ii. If an instructor uses slides from presentation software, such as Microsoft PowerPoint or Corel Presentations, which are projected to a live class, do the Access Board standards apply?

Generally, no. However, if the slides contain embedded multimedia elements, such as videos, then the Access Board standards apply to this live presentation. As a reminder, the software used to create and playback the slideshow must meet the requirements of Section 1194.21, software applications and operating systems. Similarly, the projection equipment including the presenter's remote must meet the requirements of Section 1194.25, self contained, closed products.

Regardless of whether the Access Board standards apply, agencies still have obligations to their employees under Sections 501 and 504 of the Rehabilitation Act. As an example

of reasonable accommodation, an instructor may have to read the contents of the slides, or audio describe visual elements of the slides to class members with visual disabilities.

H.8 Does an agency have an obligation under section 508 to address a complaint that is about EIT that was procured before June 21, 2001?

No. Section 508 does not provide enforcement provisions for EIT that was procured before June 21, 2001. However, the agency may still have an obligation under sections 501 and 504 of the Rehabilitation Act to accommodate the needs of an individual with a disability.

H.9 Do Federal agency software or web development tools have to meet the Access Board's standards?

Yes. Software applications, such as web development tools, are considered EIT and therefore covered by the Access Board's standards, unless an exception applies.

H.10 Are hand held devices (palm tops, cell phones) covered by section 508?

Yes. This technology is "electronic and information technology" covered by section 508 and the Access Board's standards. Most hand held devices currently fall in the category of "self contained closed products." (See section 1194.25 of the Access Board's standards). As technology advances, hand held devices may fall into other categories as well. Agencies are required to procure such products that meet the section 508 standards, subject to applicable exceptions such as "fundamental alteration (see section 1194.3(e)), "commercial availability" (see section 1194.2(b)), and "undue burden" (section 1194.2(a)).

H.11. Do private sector web sites that provide a subscription service to Federal agencies need to conform to 508 provisions?

Section 508 of the Rehabilitation Act does not place requirements on vendors. See section C.3, below. However, a vendor must design and manufacture products or services that meet the applicable Access Board's technical provisions if it wishes to sell those products or services to the government. Electronic subscription services are considered to be EIT. Thus, if a Federal agency procures an electronic subscription service from a vendor, it must procure one that meets the applicable provisions of the Section 508 standards, unless an exception, such as nonavailability, applies. (See sections F and G below.)

END